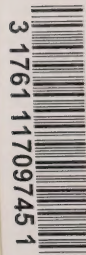




WOMEN, HUMAN RIGHTS AND THE CONSTITUTION... THE NEXT 100 YEARS



The federal government has decided to act to protect certain values in our society — basic rights such as freedom of speech, religion and the right to vote. It proposes to do this by “entrenching” a Charter of Rights and Freedoms in our new constitution. This charter would have authority over all federal and provincial laws and could only be taken away by changing or amending the constitution.

ARE WOMEN'S RIGHTS INCLUDED IN THIS PROPOSED CHARTER?

The proposed charter contains a section which directly concerns Canadian women. It promises everyone “equality before the law and . . . the equal protection of the law without discrimination because of . . . sex”.

IS THIS ENOUGH TO PROTECT WOMEN'S RIGHTS?

No. There are almost identical words in the present CANADIAN BILL OF RIGHTS and these words have not protected women when they have been tested in Canadian courts. For example, in 1973 the Supreme Court of Canada heard the cases of Jeannette Lavell and Yvonne Bedard, two Indian women who lost their status because they married non-Indians. Section 12(1)(b) of the Indian Act states that Indian women who marry non-Indians lose all their claims as Indians, including their homes on the reserves, but this law does not apply to Indian men who marry non-Indians. The Supreme Court decided that the words “before the law” only referred to the *administration* of the law — not to the law itself. Therefore, according to the Supreme Court a law which blatantly discriminated against women was perfectly legal.

In 1978, the Supreme Court considered the case of Stella Bliss who, although not having worked the required time for Unemployment Insurance maternity benefits, was forced to stop work because of her pregnancy. After her baby was born, and she was available for work, she couldn't find a job and applied for regular Unemployment Insurance benefits. Although she met all of the qualifications, her claim for normal benefits was denied because she was still within the fourteen week period during which maternity benefits are *usually* available, even though she couldn't collect them.

The Supreme Court decided that discrimination against *some* women on the basis of pregnancy was allowable under the Unemployment Insurance Act as long as *all* pregnant women in Canada did not experience unequal treatment.

Unless the proposed charter is rewritten, these two decisions will stand as precedents for the Supreme Court.

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WHAT ARE THE BEST WORDS TO PROTECT WOMEN'S RIGHTS?

The proposed charter should contain words that enable judges to reject laws that deny to some women benefits given to men in similar circumstances. We need a clause which makes it absolutely clear that women are guaranteed full equality. Such a clause might be:

“EVERY INDIVIDUAL SHALL HAVE EQUALITY OF RIGHTS UNDER THE
LAW WITHOUT REGARD TO SEX . . .”

WON'T THE SUPREME COURT PROTECT WOMEN'S RIGHTS?

No. Two changes would have to be made before women could trust the Supreme Court to protect our rights. First, as explained above, the guarantee of rights in the constitution would have to be so strongly and clearly worded that the Court could not distort the intention of the charter. Second, the Court should be representative of the major groups making up Canadian society.

Although women are 51% of the Canadian population, there has never been a woman on the Supreme Court in its 105 year history. In spite of the recommendation to appoint women made by the Royal Commission on the Status of Women in 1970, all the eight subsequent appointments — almost an entire court — have been men. The federal government already wants to guarantee at least four judges from the “civil code” tradition of Quebec. We need a guarantee that there will be a fair representation of women on the Supreme Court.

SHOULDN'T OUR RIGHTS BE DECIDED BY OUR ELECTED GOVERNMENTS RATHER THAN THE SUPREME COURT?

The Supreme Court is now the final interpreter of all Canadian laws, federal or provincial, and it will serve the same function for the proposed charter. But entrenching rights does not mean that the Supreme Court would have the last word since the charter can be changed by amending the constitution. As long as amendments require the consent of Parliament and a majority of the provinces, our elected governments have the final authority. As well, each province will still be free to make its own laws on human rights as long as they do not restrict or contravene rights guaranteed in the constitution.

WHAT ABOUT AFFIRMATIVE ACTION? WILL THERE BE SPECIAL MEASURES IN THE PROPOSED CHARTER TO HELP WOMEN RECOVER FROM PAST DISCRIMINATION IN EMPLOYMENT AND PAY?

Maybe. Special measures to help disadvantaged groups recover from past discrimination would be permitted. But women are not *specifically* mentioned, although we are the largest group in Canada suffering from historical disadvantages in pay and work opportunities. If women are not specifically included, we could face endless court battles in order to prove that we qualify for affirmative action.

WHAT CAN I DO TO HELP ENSURE THAT RIGHTS FOR ALL WOMEN ARE GUARANTEED IN THE PROPOSED CHARTER?

First, the CACSW urges you to complete the attached coupon and send it to us so that we can inform the government of your views. Contact your federal and provincial MP's by letter or telephone, and form discussion groups among the women you know. One thing is certain — another 100 years is too long to wait. We have to be the “Mothers of Confederation” for our daughters and grand-daughters.

I BELIEVE THAT THE FEDERAL GOVERNMENT'S PROPOSAL TO ENTRENCH A CHARTER OF RIGHTS AND FREEDOMS IN THE CONSTITUTION SHOULD INCLUDE:

- an equality clause which guarantees women “equality of rights under the law without regard to sex . . .”;
- specific mention of women among those groups for which “affirmative action” programmes may be allowed;
- directions to remove any law which discriminates on the basis of sex, whether the law discriminates against *all* Canadian women or only *some* of them;
- a clause guaranteeing the appointment of a representative number of women to the Supreme Court of Canada.

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